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October 31, 2022

VIA ECF

Honorable Jennifer L. Rochon
United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

Re: Martin v. New American Cinema Group et al
Civil Action No. 1:22-cv-5982

Dear Judge Rochon,

We represent Plaintiff in the above referenced matter and write this joint letter / status update, with the consent of the Defendants, per Your Honor's order dated Oct. 19, 2022 [ECF 23]. In response to the individually numbered requests in that *Order*, counsel for the parties hereby state as follows:

1. **Nature of Action / Defenses:** Plaintiff alleges several claims including copyright infringement, deceptive acts and practices in violation of New York law, trade libel, common law unfair competition, fraud, and breach of contract, arising from Defendants' operation of a film "co-op," and the management thereof. Defendant's principal defenses are that Defendants were licensed to make the reproduction alleged and distribute Plaintiff's motion picture, Defendants did not create a derivative work based upon Plaintiff's motion picture, Plaintiff's trade libel claim is barred by the statute of limitations, Defendants' alleged acts were not aimed at consumers as required for a deceptive acts and practices claim under New York law, and Plaintiff failed to meet the heightened pleading standard for fraud.
2. **Jurisdiction / Venue:** Plaintiff asserts that jurisdiction and venue lie in this Court because the subject matter (copyright infringement) is a Federal Question, and all parties reside in this district. Defendants assert that this Court lacks subject matter jurisdiction because Plaintiff cannot plead a claim for copyright infringement and there is no diversity between the Parties as alleged by Plaintiff.

3. **Deadlines:** The following are current deadlines / upcoming events, all from the Court's 10/19/2022 Order.
 - a. Defendant to file Motion to Dismiss – Oct. 31, 2022.
 - b. Plaintiff to file Opposition / Amendment – Nov. 14, 2022
 - c. Defendant Reply – Nov. 21, 2022
 - d. Initial Pre-trial Conference – Nov. 7, 2022 @ 10:30 PM.
4. **Outstanding Motions:** There are no outstanding motions at this time, however, Defendants expect to file a motion to dismiss on or before 10/31/2022.
5. **Discovery:** Plaintiff served its initial RFPs on Defendants on 19 September 2022. Defendants responded to the RFPs on October 19, 2022. No other discovery has occurred at this time. The Parties held a meet-and-confer regarding the sufficiency of the production, and Defendants' objections, on Oct. 27, 2022. Plaintiff respectfully submits that further discovery into Defendants' pattern of infringements and contractual breaches, against both named Plaintiff as well as the class, is necessary to engage in meaningful settlement discussions. Defendants submit that Plaintiff's Complaint should be dismissed with prejudice in its entirety.
6. **Settlement Discussions:** Prior to the initiation of litigation, the parties had some initial settlement discussions, however their offers / demands are not close and settlement of the case is unlikely prior to resolution of Defendants' motion to dismiss.
7. **ADR:** The parties have discussed ADR and believe that ADR may be appropriate after document discovery and the deposition of Defendant has been completed.

The Parties thank the court for its time and attention to this matter.

Respectfully submitted,

/s/ Serge Krimnus
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Serge Krimnus, Esq.